

### Remarks

To expedite prosecution of the present application, Applicants have canceled claims 12, 19, 28, 34, and 36-38 without prejudice or disclaimer. Applicants reserve the right to pursue the subject matter encompassed by all canceled claims in one or more divisional or continuation applications. Applicants have amended claim 42 to recite a "method of treating a patient having an injury to or degeneration of a photoreceptor cell" and to recite "a therapeutically effective amount" of the VEGF-2 protein. Support for amended claim can be found in the specification in, for example, Example 8. Thus, no new matter has been added.

Upon entry of the present amendments, claims 42-71 will be pending.

#### ***I. Formal Matters***

Applicants acknowledge that the Examiner has considered the Information Disclosure Statements (IDS), submitted on November 29, 2001, December 20, 2001, and December 21, 2001.

On page 2, paragraph 2B, the Examiner indicates that references BI-BN listed on the Information Disclosure Statement filed 11/29/01 have been lined through since "U.S. Applications are not proper subject matter for an IDS."

Applicants respectfully submit that U.S. Applications are proper subject matter for an Information Disclosure Statement. 37 C.F.R. §1.56(a) states that an applicant has a duty to disclose to the Patent Office all information that is material to patentability. 37 C.F.R. §1.98(a)(1) states that an information disclosure statement shall include "[a] list of all patents, publications, *applications*, or other information submitted for consideration by the Office." (Emphasis added.) Applicants submit that the U.S. Applications may include information that is material to the patentability of the instant application and are therefore contemplated by 37 C.F.R. §1.56(a) as information to be included in an IDS and are properly listed on the IDS pursuant to 37 C.F.R. §1.98(a)(1). Applicants hereby submit a supplemental IDS with a new Form SB/08 which lists the U.S. Applications. Because

copies of the Applications have been provided previously, Applicants have not included copies with this response. Applicants therefore respectfully request that the U.S. Applications listed on the attached supplemental IDS be initialed as considered by the Examiner.

Moreover, on page 2, paragraph 2C the Examiner indicates that reference DV listed on the Information Disclosure Statement filed 11/29/01 have been lined through since the publication date has not been provided. Applicants hereby submit a supplemental IDS with a new Form SB/08 in which the publication date for reference DV has been provided. Because a copy of reference DV was provided previously, Applicants have not included a copy with this response. Applicants respectfully request that reference DV listed on the Form SB/08 provided herewith be initialed as considered by the Examiner. A copy of this reference can be provided upon request.

On page 2, paragraph D of Paper 18, the Examiner indicates that references FS and FT, listed on the Information Disclosure Statement filed on November 29, 2001, have been lined through because "International Search Reports are not proper subject matter for an IDS."

Applicants respectfully submit that the International Search Reports were properly submitted to show the characterization of the references cited by the Examiner during prosecution of related PCT applications. Applicants submit that the International Search Report constitutes "other information" under 37 C.F.R. 1.98 that is material to patentability. However, since the references cited in the Search Report were listed on the Form PTO/SB/08 and initialed as considered by the Examiner, the issue is moot.

Additionally, Applicants respectfully point out that numerous supplemental IDSs were submitted to the patent office, besides the documents already considered by the Examiner. Specifically, additional, supplemental IDSs were timely submitted on March 12, 2001, January 23, 2002, April 18, 2002, August 16, 2002, September 12, 2002, and June 20, 2003. Applicants respectfully request that these additional IDS also be considered by the Examiner.

## ***II. Drawing Change***

Applicants submit new drawings that should comply with the Notice of Draftsman review. Applicants respectfully request that these replacement drawings be entered.

## ***III. Title Change***

As requested by the Examiner, Applicants have amended the title to recite: Use of Vascular Endothelial Growth Factor to Treat Photoreceptor Cells. Applicants respectfully request that the objection to the Title be withdrawn.

## ***IV. Rejection under 35 U.S.C. § 101, Double Patenting***

Claims 42-71 were provisionally rejected under the judicially created doctrine of obvious-type double patenting as allegedly unpatentable over at least claims 61-186 of U.S. Patent No. 5,932,540. The Examiner also provisionally rejected claims 42-71 under the judicially created doctrine of obvious-type double patenting as allegedly unpatentable over claims 62-150 of U.S. Application No. 09/107,997. Moreover, the Examiner provisionally rejected claims 42-71 under the judicially created doctrine of obvious-type double patenting as allegedly unpatentable over at least claims 22 and 27 of U.S. Application No. 10/084,488. Finally, the Examiner provisionally rejected claims 42-71 under the judicially created doctrine of obvious-type double patenting as allegedly unpatentable over at least claim 86 of U.S. Application No. 10/127,551. See Paper No. 18, pages 3-5.

Although applicants respectfully disagree and traverse this rejection, in the interest of facilitating prosecution, applicants have amended claim 42 to recite "a method of treating a patient having an injury to or degeneration of a photoreceptor cell" and to recite "a therapeutically effective amount" of the VEGF-2 protein. Neither of these claim amendments are disclosed or suggested by the claims recited in the applications or patent. Moreover, the process steps are not inherently taught by the cited references, since the treated patient must have "an injury to or degeneration of a photoreceptor cell." Therefore,

applicants respectfully request that the Examiner withdraw the rejection of the pending claims.

Applicants acknowledge that the Examiner may provisionally reject claims 42-71 under the judicially created doctrine of obvious-type double patenting as allegedly unpatentable over the claims pending in U.S. Application No. 10/120, 398 or 10/060,523. However, applicants believe that the claim amendments to claim 42 obviate any potential rejection.

***V. Rejection under 35 U.S.C. §§ 102 and 103***

Claims 42-71 were rejected under 35 U.S.C. 102(e) as allegedly anticipated by U.S. Patent No. 5,932,540, and claims 42-49, 52-59, 62-69 were rejected under 35 U.S.C. 102(e) as allegedly anticipated by U.S. Patent No. 6,130,071. Similarly, claims 50, 51, 60, 61, 70, and 71 were rejected under either 35 U.S.C. 102(e) or 35 U.S.C. 103(a) as allegedly unpatentable over U.S. Patent No. 6,130,071.

Although applicants respectfully disagree and traverse this rejection, in the interest of facilitating prosecution, applicants have amended claim 42 to recite a "method of treating a patient having an injury to or degeneration of a photoreceptor cell" and to recite "a therapeutically effective amount" of the VEGF-2 protein. Neither of these claim amendments are disclosed or suggested by the cited patents. Moreover, the process steps are not inherently taught by the cited references, since the treated patient must have "an injury to or degeneration of a photoreceptor cell." Therefore, applicants respectfully request that the Examiner withdraw the rejection of the pending claims.

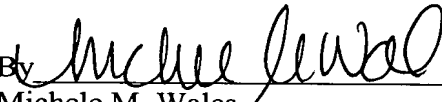
***Conclusion***

The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicant would expedite the examination of this application.

Applicants believe that there are no fees due in connection with the filing of this paper. However, should a fee be due, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested and the appropriate fee should also be charged to our Deposit Account.

Dated: July 10, 2003

Respectfully submitted,

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Enclosures  
MMW/lcc